

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

OAKS AT STONE FOUNTAIN LIMITED  
PARTNERSHIP.

Petitioner

vs.

FHFC Case No. 2008-071VW

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(14)(e), F.A.C.**

Oaks at Stone Fountain Limited Partnership, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.004(14)(e), Florida Administrative Code (2005). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

1. The address, telephone number and facsimile number of the Petitioner is:

Oaks at Stone Fountain Limited Partnership  
c/o Beneficial Communities  
2206 Jo-An Drive  
Sarasota, Florida 34231  
Phone: (941) 929-1270  
Fax: (941) 929-1271

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Maureen McCarthy Daughton  
Broad and Cassel  
215 S. Monroe Street, Suite 400  
Tallahassee, FL 32301  
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3. Petitioner successfully applied for financing from the Housing Tax Credit ("HC") program in the 2005 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; HOME Investment Partnerships (HOME) Rental Program and Housing Credit (HC) Program (the "Universal Cycle") that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's application number is 2005-125C (the "Application"). Petitioner applied for an allocation of Competitive HC to finance a portion of the costs to develop an 80-unit multifamily rental development in Hillsborough County, Florida, to be known as Oaks at Stone Fountain (the "Development"). In the Application, the site control documentation filed as part of the Application identified the parcel as approximately 3.98 acres.

4. When the Petitioner submitted its Application, it intended to rehabilitate 16 units and construct 64 new units. Subsequently, the Corporation approved a change to allow new construction of the entire 80 units. As such, the 16 existing units were demolished to allow for construction of the 80 units on the Development site. In order to accommodate the new construction of all 80 units, Petitioner acquired additional property adjacent to the Development site totalling approximately 2.88 acres, which was noted in the Final Credit Underwriting Report dated December 4, 2007, prepared by Seltzer Management Group, Inc. (the "Final Report").

5. Petitioner is in the process of making application to the Corporation for receipt of its Form 8609, to receive its final allocation of federal low income housing tax credits. In conjunction with the final allocation, the Corporation has to insure that the conditions contained in the carryover allocation agreement have been satisfied. One such condition is the execution of an Affidavit to the effect that the Development site remains unchanged since Application submission. Because the inclusion of additional acreage could be considered a "change" of the

“Site” for the Development. Petitioner is submitting this Petition to request a waiver of the requirement that the site for the Development remain unchanged, as described above and as acknowledged in the Final Report. The additional acreage does not impact the location of the Tie Breaker Measurement Point on the Development site.

**THE RULE FROM WHICH WAIVER IS SOUGHT**

6. Rule 67-48.004(14)(c) (2005) provides in part:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

\* \* \*

(e) Site for the Development:

\* \* \*

**STATUTES IMPLEMENTED BY THE RULES**

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the statute that created the Housing Credit Program. See §420.5093, Florida Statutes. The Act designates the Corporation as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). Section 420.5099(1) and (2), Florida Statutes (2005). Accordingly, the Rules subject to

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

Petitioner's request for rule waiver are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Allocation Procedures for the HC Program.

8. The pertinent statute regarding granting of waivers provides: "[W]aivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness." Section 120.542(2), Florida Statutes (2005). "Substantial Hardship" is defined as a demonstrated economic, technological, legal or other type of hardship "to the person requesting the variance or waiver." The hardship in this case to the Petitioner is that if this Petition is not granted, Petitioner will not be able to complete the Corporation's Affidavit as currently drafted, and will not be able to satisfy one of the carryover allocation conditions which is a condition precedent to receipt of its final allocation of tax credits.

**WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

9. In light of the considerable time that it takes to develop multi-family rental housing, the Corporation's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, which might necessitate a modification in a Development. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing key elements in its application after reviewing the applications of its competitors, thereby allowing the Applicant to gain a possible competitive advantage. Due to the fact that the inclusion of additional acreage on the Development site will not result in a

change in the Tie Breaker Measurement point of Petitioner's application, the Petitioner has not received any unfair advantage over its competitors. The Corporation will not be harmed in the granting of this Petition, as the intent of the Rule will not be violated.

10. The violation of principles of fairness and imposition of a substantial hardship would result from strict compliance with the provisions of F.A.C. Rule 67-48.004(14). As noted above, the purpose of the Rule is to prevent a change in the location of the Development site, such that the Applicant would receive a competitive advantage over other applicants. Unless the Corporation grants Petitioner's petition for waiver to allow the change in the Development site to increase the acreage (which is actually a benefit to the property), Petitioner will not be able to meet its carryover allocation conditions and receive its final allocation of tax credits, certainly an unfair and unintended consequence of the Rule. The substantial hardship which would result (not obtaining its final allocation of tax credits) from strict compliance with the foregoing is obvious.

11. Petitioner believes that a waiver of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rule, because one of the goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

[T]he maximum use of available tax credits in order to encourage development of low-income housing in the State, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the Applicant to proceed to completion of the project in the calendar year for which the credit is sought.

Section 420.5099(2), Florida Statutes (2005).

The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver requesting and permitting Petitioner to make the aforementioned changes, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income. The requested waiver will not adversely impact the Development or the Corporation.

**TYPE OF WAIVER**

12. The waiver being sought is permanent in nature.

13. Should the Corporation have questions or require any additional information,

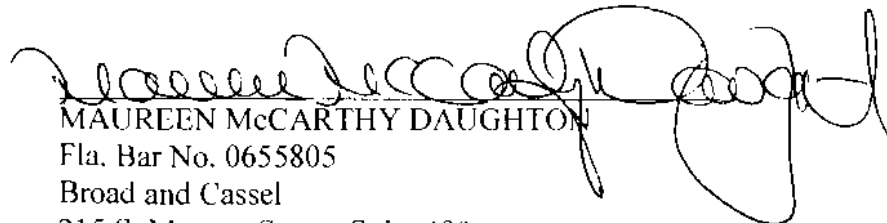
Petitioner is available to provide any additional information necessary for consideration of the Petition.

**ACTION REQUESTED**

14. Petitioner requests that the Corporation grant the Petition and all the relief requested here:

15. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 26 day of August, 2008.



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